MT LEGISLATIVE HISTORY

Chapter 689 1979

Bill(H) 842 S_____ Original bill & hist. ___C

H. Committee on Select Committee on Water S. Committee on Natural Resources

Hearing Date(s)			Hearing Date(s)	
FEB 19	✓C		MAR 12	✓C
_____	___C		MAR 14	✓C
_____	___C		_____	___C
_____	___C		_____	___C
Date Out Feb 19	✓C		MAR 14	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 842

INTRODUCED BY Day By Request of Select Water Committee

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING IN-STREAM FLOW IN THE YELLOWSTONE RIVER WHENEVER THE BOARD OF NATURAL RESOURCES AND CONSERVATION DETERMINES THAT THE RESERVATION IS NOT REQUIRED; AMENDING SECTION 85-2-605, MCA; PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-605, MCA, is amended to read:

"85-2-605. Reservations. (1) The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under 85-2-316 for beneficial use of that water in the state of Montana. Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life.

(2) A reservation of water under this part for the purpose of maintaining minimum flows for the protection of aquatic life is subject to reallocation by the board and subsequent appropriations whenever the board determines that all or part of the reservation is not required to protect aquatic life."

Section 2. Effective date. This act is effective on passage and approval.

-End-

HB 842

INTRODUCED BILL

46th LEGISLATIVE SESSION

COMMITTEE ON Natural Resources

House BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
		3/12/79							
694	2/28/79	3/14/79	3/14/79						3/14/79
716	2/28/79	3/14/79 3/19/79	3/19/79					3/19/79	
717	2/23/79	3/9/79 3/16/79	3/16/79					3/16/79	
733	2/23/79	3/5, 3/16 3/19, 3/22	3/22/79 tabled						
739	2/20/79	3/2/79	3/2/79				3/2/79		
742	2/23/79	3/7, 3/14 3/19/79	3/19/79						as amended 3/19/79
759	2/23/79	3/9/79 3/14/79	3/14/79					3/14/79	
785	2/28/79	3/7/79 3/12/79	3/12/79					3/12/79	
816	2/23/79	3/7/79 3/12/79	3/12/79						3/12/79
842	2/23/79	3/12/79 3/14/79	3/14/79					3/14/79	
883	2/28/79	3/14/79 3/21/79	3/21/79					3/21/79	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

Chairman Roskie closed the hearing on HB 617 and the Committee recessed briefly while those visitors only interested in HB 617 left the Committee Room.

CONSIDERATION OF HB 842: "An act to permit the reallocation and appropriation of water reserved for purposes of maintaining in-stream flow in the Yellowstone River whenever the Board of Natural Resources and Conservation determines that the reservation is not required; amending section 85-2-605, MCA; providing for an effective date."

Chairman Roskie called on Representative William Day, District 54, to present HB 842 to the Committee. Representative Day said HB 842 came out of the Select Water Committee. He said they had amended it there and he felt one of their amendments should be changed by taking out "higher beneficial use" on page 2, line 8. Mr. Doney said HB 842 amends the wrong section of the law and submitted some amendments for the Committee's consideration (see attachment).

Mr. Cecil Weeding, Chairman for the Department of Natural Resources and Conservation, supported HB 842 and submitted a resolution from the Board of Natural Resources and Conservation passed on February 23, 1979 calling for some type of legislation that would do what HB 842 would accomplish (see attachment).

Mr. Al Kersich, Montana Water Development Association, spoke in favor of HB 842 and submitted some amendments for the Committee to consider (see attachment).

Mr. Mons Teigan, Montana Stockgrowers and Montana Woolgrowers, was also in favor of HB 842 and submitted an amendment for the Committee's consideration (see attachment).

Mr. Bob Biggerstaff, Montana Association of Conservation Districts, was also in favor of HB 842 and supported the amendments proposed by the Department of Natural Resources.

Mr. Peter Jackson, Western Environmental Trade Association, also supported HB 842 and said it is a beginning at addressing the problem.

Gordon McGowen, Montana Railroad Association, was also in favor of HB 842 and felt the amendments improved the bill.

Sharon Peterson, WIFE, Farmers Union, NFO, Farm Bureau, was in favor of HB 842 and felt it was necessary.

Mr. Bill Asher, Agricultural Preservation Association, was also in favor of HB 842.

Mr. Gene Spilde, SGPA Park Coalition, also spoke in favor of HB 842.

Chairman Roskie called for any opponents to HB 842. Mr. Frank Schledorn was opposed to HB 842 and submitted his comments in written form (see attachment).

Chairman Roskie decided to put all the proposed amendments into a subcommittee for their consideration and appointed Senators Manley, Etchart and Story to serve on the subcommittee.

Representative Day closed and requested permission to sit in on the subcommittee meetings. He also informed the Committee that the information requested on HB 733 should be available before the Committee meets on Wednesday, March 14.

CONSIDERATION OF HB 694: "An act delegating authority to the Board of Natural Resources and Conservation to authorize diversions from the Yellowstone River Basin under Article X of the Yellowstone River Compact, section 85-20-101, MCA, on behalf of the State of Montana as a signatory state thereto; and providing an effective date."

Chairman Roskie called on Representative William Day, District 54, to present HB 694 to the Committee.

Representative Day said he felt the Department of Natural Resources has the knowledge to handle the authority this bill would delegate to them.

Chairman Roskie called for any other proponents to HB 694. Mr. Ted Doney, Director for the Department of Natural Resources, said he helped draft this bill and said there should be a mechanism to approve these diversions.

There being no other proponents, Chairman Roskie called for any opponents to HB 694. Mr. Les Loble II, Intake Water Company, said HB 694 was unworkable in its present state and submitted three letters from citizens in Wibaux County that were opposed to HB 694 (see attachments).

Mr. Jim Mockler, Montana Coal Council, was also opposed to HB 694 and said it should stay within the title which would then only leave section 2 and possibly 7 and 8.

Mr. Gene Spilde, Montana Water Development Association, was also opposed to HB 694.

Mr. Peter Jackson, Western Environmental Trade Association, was also opposed to HB 694. He said if the Committee must pass this bill it should be amended back to its original condition, but he would prefer the bill be killed.

DISPOSITION OF HB 842: Chairman Roskie called on Senator Etchart to report on what the subcommittee had decided on. Senator Etchart presented the Committee with a copy of the re-drafted bill and explained the amendments the subcommittee felt should be adopted. Senator Brown asked if Representative Day, Mr. Ted Doney and Mr. Al Kirsich had been invited to the subcommittee meetings. Senator Etchart explained that the only time the subcommittee had been able to meet was during breakfast and so the above named individuals were not made aware of the meetings.

Senator Dover moved that the amendments to HB 842 be adopted. The motion carried with Senator Brown voting no, Senator Jergeson abstaining and Senator Lowe having previously registered a yes vote. Senator Dover moved that HB 842 BE CONCURRED IN as Amended. The motion carried with Senators Brown and Jergeson voting no and Senator Lowe having previously registered a yes vote. Senator Lowe arrived at this time.

DISPOSITION OF HB 694: Senator Dover moved that HB 694 BE NOT CONCURRED IN. There was some discussion on the amendments put in by the House and then Chairman Roskie called for the vote. The motion carried with only Senator Brown voting no. Senator Lockrem registered a vote in favor of the motion before leaving the meeting.

DISPOSITION OF HB 742: Senator Brown presented his amendment to the Committee for their consideration. Senator Brown wanted to amend HB 742 on page 1, lines 15 through 21 by striking the remainder of lines 15 through line 21 following "state." on line 15 and inserting "However, nothing in the chapter expands the substantive decision-making authority of an agency to issue, deny, modify, or otherwise act upon an application for a lease, permit, contract, license, or certificate except where agency-initiated or agency-financed action is involved." Senator Brown then moved the adoption of the previously stated amendment. Senator Dover withdrew his motion that HB 742 BE NOT CONCURRED IN in order to vote on Senator Brown's amendment. The motion carried unanimously. Senator Brown then moved that HB 742 BE CONCURRED IN as Amended. Chairman Roskie called for a roll call vote on Senator Brown's motion (see attachment). Senator Lockrem registered a no vote on the motion at the close of the hearing making the vote a tie and keeping HB 742 in Committee.

Chairman Roskie adjourned the executive session and began the hearing on HB 883.

CONSIDERATION OF HB 883: "An act to generally revise the law relating to Major Facilities and Siting; amending sections

STANDING COMMITTEE REPORT

March 15, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 842

Day (Etchart)

Respectfully report as follows: That House Bill No. 842, third reading bill, be amended as follows:

1. Title, lines 6 through 9.
Following: "MAINTAINING" on line 6
Strike: "IN-STREAM"
Insert: "MINIMUM"
Following: "FLOW" on line 6
Strike: remainder of line 6 through "REQUIRED;" on line 9
Insert: ", LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; REQUIRING ADJUDICATION BEFORE AWARD OF RESERVATIONS; CLARIFYING THE METHOD OF APPROPRIATION OF CERTAIN RESERVED WATER;"
Following: "SECTION" on line 9
Strike: "85-2-605"
Insert: "85-2-316"

DO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

2. Page 1, line 13 through line 4 on page 2.
Following: line 12
Strike: Section 1 in its entirety
Insert: "Section 1. Section 85-2-316, MCA, is amended to read:
"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after [the effective date of this act] for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of the historic low flow as determined by the department at such point on the stream or river.

(6) The board may not after [the effective date of this act] award any reservation on any stream or river until the existing water rights on that stream or river have been adjudicated in accordance with this chapter.

~~(5)~~ (7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) Any person desiring to use water reserved to a conservation district may apply to the department for a permit under 85-2-302, the department shall maintain records of permits issued for water reserved to conservation districts and be responsible for rendering all technical and administrative assistance in the processing of such applications for the conservation districts. The conservation district must concur with the department's action on any application for a permit for waters reserved to the district.

~~(6)~~ (9) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

~~(7)~~ (10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section or who is eligible for a permit to appropriate water under this part. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use.

(12) The board shall assign the following order of preference to reallocated reservations:

(a) municipal and domestic use;

(b) agricultural and stock water use;

(c) industrial use;

(d) maintenance of minimum flow, level, or quality of water.

(13) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

And, as so amended,
BE CONCURRED IN

GR

George F. Roskie, Chairman.

STATE PUB. CO.
Helena, Mont.

Select Water COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 733	TO GENERALLY REVISE THE LAWS RELATING TO CONTROLLED GROUND-WATER AREAS.	2-12-79	Day	2-16-79	Do Pass	2-17-79
HB 842	TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING IN-STREAM FLOW IN THE YELLOWSTONE RIVER WHENEVER THE BOARD OF NAT. RES. AND CONSRV. DETERMINES THAT THE RESERVATION IS NOT REQUIRED.	2-16-79	Day	2-19-79	Do Pass	2-19-79
HJR 48	TO ENCOURAGE SIGNATORY STATES OF THE YELLOWSTONE RIVER COMPACT TO ABIDE BY THE PROVISIONS OF THE COMPACT AND TO LIMIT WATER DIVERSIONS TO THOSE AUTHORIZED IN MANNER AND AMOUNT BY THE COMPACT AND TO PERMIT WATER DIVERSIONS ONLY CONSISTENT WITH THE PROVISIONS OF THE COMPACT	2-19-79	Day	2-19-79	Do Pass	2-19-79
SB 410	REQUIRE IRRIGATION DISTRICT AND OTHER USERS OF STORED WATER TO SHARE THE EXPENSES AND COSTS OF A WATER COMMISSIONER APPOINTED TO ADMEASURE AND DISTRIBUTE WATER STORED IN A RESERVOIR.	2-19-79	Etchart	3-9-79	Be Concurred In	3-9-79
HB 745	TO ESTABLISH A WATER RESOURCES OVERSIGHT COMMITTEE AND TO APPROPRIATE FUNDS FOR COMMITTEE SUPPORT.	4-4-79	Curtiss	4-5-79	Do Pass As Amended	4-5-79
SB 524	RESTRICT AND REGULATE THE APPROPRIATION AND SALE OF GROUND WATER IN MONTANA.	4-19-79	Blaylock	4-19-79	Be Concurred In	4-19-79

HOUSE SELECT COMMITTEE ON WATER

February 19, 1979

The meeting was called to order by acting Chairman Dassinger at 7:30 p.m. with all members present except Representatives: Kemmis, Nathe, Ramirez, and Scully.

HOUSE BILL NO. 842

REPRESENTATIVE WILLIAM M. DAY introduced the bill. This bill is the recommendation of the Select Committee on Water. It will permit the reallocation and appropriation of water reserved for purposes of maintaining in-stream flow in the Yellowstone River whenever the Board of Natural Resources and Conservation determines that the reservation is not required. This bill was drafted mostly to cover the Fish and Game's reservation for in-stream flow, giving the DNRC the authority, if the need arises, to reallocate.

He then proposed amendments to change, "aquatic life" to "in-stream flow" throughout, and page 2, line 4, insert: "or a more beneficial use can be proven."

PROPONENTS:

JAMES POSEWITZ, Department of Fish and Game, stated that their interest is in protecting the in-stream flow of water. They asked that the review of the in-stream flow be made at the same time the other reservations are reviewed. They made their case once and can do it again. It was their understanding when the reservation was made that the Department had the right to reallocate this water if necessary.

BOB BIGGERSTAFF, Montana Association of Conservation Districts, stated that they were in favor of anything that would improve the use of water for agricultural purposes.

JOHN WILSON, Montana Council of Trout Unlimited, stated that the amendments make more sense and give more flexibility. They agreed that since the 10 year review is already allowed for, they would encourage this review be done on a 10 year bais, also.

FRANKLIN GROSFIELD, Big Timber, rose in support of the amendments.

Seeing no opponents the hearing on HB 842 was closed.

HOUSE JOINT RESOLUTION NO. 48

REPRESENTATIVE WILLIAM M. DAY introduced the bill which was also a request of the Select Water Committee. This resolution was stemmed from a bill that had been introduced in the Wyoming legislature. Their bill would by-pass the agreement made with us in the Yellowstone River Compact. This is in violation of the compact and we will be letting them know that we are not going to sit and let it go unnoticed.

RONALD F. WATERMAN, Montana Railroad Association, stated that they were

in support for the reasons stated by Representative Day. We are encouraging the signatory states of the Yellowstone River Compact to abide by the provisions of the Compact by passage of this resolution.

TED DONEY, Department of Natural Resources and Conservation, rose in support of the resolution. Notice has already been served on Wyoming letting them know that we do not intend to set by and let them violate the Compact.

Chairman Day resumes the Chair.

EXECUTIVE SESSION:

HOUSE JOINT RESOLUTION NO. 48

Representative Hand moved, DO PASS. The motion was carried unanimously.

HOUSE BILL NO. 842

Representative Dassinger moved, TO AMEND, by committee of the whole, the amendments proposed by Representative Day. The motion was carried unanimously.

Representative Hand moved, DO PASS. The motion was carried unanimously.

The meeting was adjourned at 7:50 p.m.

William M. Day, Chairman

Judy J. Mook, Secretary

HOUSE BILL NO. 842

INTRODUCED BY DAY

BY REQUEST OF SELECT WATER COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR PURPOSES OF MAINTAINING ~~IN-STREAM~~ MINIMUM ~~IN-STREAM~~ MINIMUM FLOW ~~IN-THE-YELLOWSTONE-RIVER-WHENEVER-THE-BOARD-OF-NATURAL-RESOURCES-AND-CONSERVATION-DETERMINES-THAT--THE--RESERVATION-IS--NOT--REQUIRED~~; LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; ~~REQUIRING--ADJUDICATION--BEFORE-AWARD----OF---RESERVATIONS;---CLARIFYING---THE---METHOD---OF-APPROPRIATION-OF-CERTAIN-RESERVED--WATER~~; AMENDING SECTION ~~85-2-605~~ 85-2-316, MCA; PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section-1.--Section--85-2-605,-MCA,-is-amended-to-read:~~

~~"85-2-605.--Reservations.--(1)-The-department-may--apply-for--reservations--and-shall,-as-rapidly-as-possible,-assist-other-appropriate-state-agencies-and-political--subdivisions-in--applying--for--reservations-within-the-basin.-The-United-States-or-any-agency-thereof-may-apply--for--reservation--of-water-in-the-basin-under-85-2-316-for-beneficial-use-of-that-water--in-the-state-of-Montana.-Particular-emphasis-shall-be-given-to-applications-to--reserve--water--for--agricultural,-municipal,--and--minimum-flow-purposes-for-the-protection-of-existing-rights-and-aquatic-life.~~

~~(2)--A ALL OR PART OF A reservation of water under this part for the purpose of maintaining A minimum flows for the protection--of-aquatic-life FLOW, LEVEL, OR QUALITY OF WATER AS PROVIDED IN 85-2-316 is subject to reallocation by the board and subsequent appropriations whenever the board, AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING, determines that:~~

~~(a)--all--or-part-of-the-reservation-is-not-required to protect aquatic life FOR ITS PURPOSE; AND~~

~~(b)--A-PROPOSED-NEW-USE-IS-A-HIGHER-BENEFICIAL-USE--FOR-MONTANA-THAN-THAT-FOR-WHICH-THE-RESERVATION-WAS-MADE."~~

SECTION 1. SECTION 85-2-316, MCA, IS AMENDED TO READ:

"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The

REFERENCE BILL: Includes Free Joint Conference Committee Report Dated 4/10/99

Gov. amendments enclosed

HB 0842/05

department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after [the effective date of this act] for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of the ~~historic low flow as determined by the department at such point on the stream or river~~ 50% OF THE AVERAGE ANNUAL FLOW OF RECORD ON GAUGED

STREAMS. UNGAUGED STREAMS CAN BE ALLOCATED AT THE DISCRETION OF THE BOARD.

~~(6) The board may not after [the effective date of this act] award any reservation on any stream or river until the existing water rights on that stream or river have been adjudicated in accordance with this chapter.~~

~~(5)~~(6) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

~~(6)~~(7) Any person desiring to use water reserved to a conservation district FOR AGRICULTURAL PURPOSES ~~may apply to~~ SHALL MAKE APPLICATION FOR SUCH USE WITH THE DISTRICT, AND THE DISTRICT UPON APPROVAL OF THE APPLICATION MUST INFORM the department ~~for a permit under 85-2-302, the~~ OF THE ~~DESIRED~~ APPROVED USE. THE department shall maintain records of ~~permits issued for~~ ALL USES OF water reserved to conservation districts and be responsible for rendering ~~all~~ technical and administrative assistance WITHIN THE DEPARTMENT'S STAFFING AND BUDGETING LIMITATIONS in the processing of such applications for the conservation districts. ~~The conservation district must concur with the department's action on any application for a permit for~~

~~waters reserved to the districts. NO SUCH USE MAY BE PERMITTED WITHOUT CONSERVATION DISTRICT'S CONCURRENCE.~~

~~(6)~~ ~~(9)~~ (8) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

~~(7)~~ ~~(10)~~ (9) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

~~(8)~~ (10) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section ~~or who is eligible for a permit to appropriate water under this part~~. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that ALL OR PART OF THE RESERVATION IS NOT REQUIRED FOR ITS PURPOSE AND THAT THE need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. REALLOCATION OF RESERVED WATER SHALL NOT ADVERSELY AFFECT THE PRIORITY DATE OF THE RESERVATION, AND THE RESERVATION SHALL RETAIN ITS PRIORITY DATE DESPITE

REALLOCATION TO A DIFFERENT ENTITY FOR A DIFFERENT USE. ~~Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use.~~ THE BOARD MAY NOT REALLOCATE WATER RESERVED UNDER THIS SECTION ON ANY STREAM OR RIVER MORE FREQUENTLY THAN ONCE EVERY 5 YEARS. ~~WHENEVER WATER IS REALLOCATED, THE PRIORITY DATE OF THE NEW USE IS THE DATE OF REALLOCATION, NOT THE DATE OF THE ORIGINAL RESERVATION.~~

~~(12)~~ ~~(11)~~ The ~~NOTWITHSTANDING THE PROVISIONS OF 85-2-401, THE board shall assign the following order of preference PRIORITY to reallocated reservations:~~

~~(a) municipal and domestic uses~~

~~(b) agricultural and stock water uses~~

~~(c) industrial uses OTHER USES.~~

~~(d) maintenance of minimum flow, level, or quality of water.~~

~~(13)~~ ~~(12)~~ (11) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

Section 2. Effective date. This act is effective on passage and approval.

-END-